

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SIETEL SINGH GILL, individually and on  
behalf of other similarly situated individuals,

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE, a New  
York unincorporated association, and  
NFL ENTERPRISES, LLC, a Delaware  
limited liability company,

Defendants.

Case No. 1:21-cv-01032

**ANSWER, AFFIRMATIVE DEFENSES  
AND JURY DEMAND**

Defendants, NATIONAL FOOTBALL LEAGUE, and NFL ENTERPRISES, LLC (“Defendants”), by and through its counsel, London Fischer LLP, hereby file their Answer and Affirmative Defenses to the Amended Complaint filed by Plaintiff, SIETEL SINGH GILL (“Plaintiff”), individually and on behalf of all others situated, and upon information and belief, allege:

**INTRODUCTION**

1. The allegations contained within Paragraph 1 of the Amended Complaint are not directed at Defendants; and, therefore, no response thereto is required from or made by Defendants.

**JURISDICTION AND VENUE**

2. Paragraph 2 of the Amended Complaint requires legal analysis and conclusion for which a response is not required; and, therefore, Defendants make no response thereto.

3. Paragraph 3 of the Amended Complaint requires legal analysis and conclusion for which a response is not required; and, therefore, Defendants make no response thereto.

4. Paragraph 4 of the Amended Complaint requires legal analysis and conclusion for which a response is not required; and, therefore, Defendants make no response thereto.

#### THE PARTIES

5. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 5 of the Amended Complaint.

6. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 6 of the Amended Complaint.

7. Admit.

8. Admit, except clarifies that the NFL does not have subsidiaries.

9. Defendants deny the characterizations and allegations contained in Paragraph 9 concerning NFL Enterprises scope of business and its practices. Defendants, however, admit that NFL Enterprises is a limited liability company organized under the laws of the State of Delaware.

10. Defendants deny the allegations contained in Paragraph 10 the Amended Complaint, except admit that NFL Enterprises maintains an office in New York, New York.

11. To the extent that the allegations contained within Paragraph 11 of the Amended Complaint assert any wrongdoing by the Defendants, it is denied. Further, to the extent Paragraph 11 of the Amended Complaint requires legal analysis and conclusion, a response is not required; and, therefore, Defendants make no response thereto.

#### NATURE OF ACTION

12. The allegations contained within Paragraph 12 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as same constitute allegations of fact and suggest or imply that

Defendants violated contractual or other rights of Plaintiff and the proposed class members, Defendants deny those allegations.

### STATEMENT OF FACTS

#### **A. Game Pass**

13. The allegations contained within Paragraph 13 of the Amended Complaint are not directed at Defendants; and, therefore, no response thereto is required from or made by Defendants.

14. Defendants deny the allegations as they are phrased in Paragraph 14 of the Amended Complaint.

15. Defendants deny the allegations as they are phrased in Paragraph 15 of the Amended Complaint.

16. The allegations contained within Paragraph 16 of the Amended Complaint contain conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Defendants deny the remaining allegations as they are phrased in Paragraph 16 of the Amended Complaint.

17. The allegations contained within Paragraph 17 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Additionally, Defendants refer the Court to the terms of the applicable Terms and Conditions agreed to by Plaintiff, which provide that “[t]he governing law and the competent jurisdiction are the one of the country where the consumer has his habitual residence.”

18. Defendants deny the allegations as they are phrased in Paragraph 18 of the Amended Complaint.

**B. Failure to Provide Live Streaming of the Complete Super Bowl**

19. Defendants deny the allegations as they are phrased in Paragraph 19 of the Amended Complaint.

20. Defendants deny the allegations as they are phrased in Paragraph 20 of the Amended Complaint.

21. Defendants deny the allegations as they are phrased in Paragraph 21 of the Amended Complaint.

22. Defendants deny the characterizations and allegations as they are phrased in Paragraph 22 of the Amended Complaint; however, Defendants admit that outages did occur during the Super Bowl.

23. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 23 of the Amended Complaint.

24. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 24 of the Amended Complaint.

25. The allegations contained within Paragraph 25 of the Amended Complaint are denied.

26. Defendants deny the allegations as they are phrased in Paragraph 26 of the Amended Complaint and Defendants leave Plaintiff to his proof.

27. The allegations contained within Paragraph 27 of the Amended Complaint are denied.

28. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 28 of the Amended Complaint. To the extent that Paragraph 28 alleges wrongdoing on the part of the Defendants, it is rejected.

29. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 29 of the Amended Complaint. Defendants, however, deny the remaining allegation that Plaintiff sustained any injury

**C. Plaintiff Sietel Singh Gill**

30. Defendants admit this allegation as it pertains to the 2013 NFL season.

31. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 31 of the Amended Complaint addressing Plaintiffs' belief. Defendants deny the remaining allegations in Paragraph 31.

32. To the extent that Paragraph 32 of the Amended Complaint alleges any wrongdoing against the Defendants, it is denied. Any email communications indicated in this allegation speaks for itself.

33. Defendants deny the allegations contained in Paragraph 33.

34. To the extent that Paragraph 34 of the Amended Complaint alleges any wrongdoing against the Defendants, it is denied. Any email communications indicated in this allegation speaks for itself.

35. Defendants deny the allegations set forth in Paragraph 35 of the Amended Complaint as no contract existed between Defendants and Plaintiff in 2019.

36. Defendants deny the allegations in Paragraph 36 of the Amended Complaint except admit that the 2019 terms did not apply to the 2013 season.

37. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 37 of the Amended Complaint.

38. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 38 of the Amended Complaint. To the extent that Paragraph 33 alleges wrongdoing on the part of the Defendants, it is denied.

39. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 39 of the Amended Complaint.

40. The allegations contained within Paragraph 40 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. To the extent that Paragraph 40 alleges wrongdoing on the part of the Defendants, it is rejected.

**D. Defendants' Use of Third Parties Related to Game Pass**

41. Defendants deny the allegations they are phrased in Paragraph 41 of the Amended Complaint.

42. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 42 of the Amended Complaint.

43. Defendants deny the characterizations and allegations concerning the “landing page” as phrased in Paragraph 43 of the Amended Complaint. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

44. Defendants deny the characterizations and allegations concerning the “landing page” as phrased in Paragraph 44 of the Amended Complaint. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

45. Defendants deny the characterizations and allegations concerning the “landing page” as phrased in Paragraph 45 of the Amended Complaint. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

46. Defendants deny the characterizations and allegations concerning the “sign-up page” as phrased in Paragraph 46 of the Amended Complaint. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

47. To the extent that Paragraph 47 of the Amended Complaint alleges any wrongdoing against the Defendants, it is denied. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

48. To the extent that Paragraph 48 of the Amended Complaint alleges any wrongdoing against the Defendants, it is denied. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

49. Defendants deny the characterizations and allegations concerning the “NFL’s Terms of Service and Privacy Policy” as phrased in Paragraph 49 of the Amended Complaint. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

50. Defendants deny the characterizations and allegations concerning the “NFL Game Pass Terms & Conditions” as phrased in Paragraph 50 of the Amended Complaint. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

51. Defendants deny the characterizations and allegations concerning the “Subscription Product Terms” as phrased in Paragraph 51 of the Amended Complaint. Additionally, Defendants refer to the applicable terms and conditions agreed upon by Plaintiff in 2019 as they speak for themselves.

52. Defendants deny the allegations in Paragraph 52 of the Amended Complaint.

53. Defendants deny the allegations in Paragraph 53 of the Amended Complaint.

54. Defendants deny the allegations in Paragraph 54 of the Amended Complaint.

55. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegations contained in Paragraph 55 of the Amended Complaint.

56. Defendants deny the allegations in Paragraph 56 of the Amended Complaint.

57. Defendants deny the allegations in Paragraph 57 of the Amended Complaint.

58. Defendants deny the allegations in Paragraph 58 of the Amended Complaint.

#### CLASS ACTION ALLEGATIONS

59. The allegations contained within Paragraph 59 of the Amended Complaint merely propose to seek certification of the class that Plaintiff seeks to represent; and, therefore, no response is required. Insofar a response is required, Defendants object to the definition of the class and deny that any such class exists.

#### Definition of Proposed Class

60. The allegations contained within Paragraph 60 of the Amended Complaint merely propose to define the class that Plaintiff seeks to represent; and, therefore, no response is required. Insofar a response is required, Defendants object to the definition of the class and deny that any such class exists.

61. The allegations contained within Paragraph 61 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendant makes no response thereto.

62. The allegations contained within Paragraph 62 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendant makes no response thereto. Insofar as a response is required, Defendants deny that certification of Plaintiff's claims for class-wide treatment is appropriate.



Size of the Proposed Class

63. The allegations contained within Paragraph 63 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendant makes no response thereto. Insofar as same constitute allegations of fact, and a response is required thereto, those allegations are denied.

Adequacy of Representation by the Class Representative

64. The allegations contained within Paragraph 64 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto.

Common Questions of Law and Fact

65. The allegations contained within Paragraph 65, including all sub-paragraphs, of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto.

Typicality of Claims of the Class Representatives

66. The allegations contained within Paragraph 66 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as a response is required thereto, Defendants deny those allegations.

67. The allegations contained within Paragraph 67 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. However, any allegations of fact contained in Paragraph 44 are denied.

68. The allegations contained within Paragraph 68 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as a response is required thereto, Defendants deny those allegations.

69. The allegations contained within Paragraph 69 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as a response is required thereto, Defendants deny those allegations.

Nature of the Notice to the Proposed Class

70. The allegations contained within Paragraph 70 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendant makes no response thereto.

71. The allegations contained within Paragraph 71 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto.

72. The allegations contained within Paragraph 72 of the Amended Complaint are not directed at Defendants; and, therefore, no response thereto is required from or made by Defendants.

Additional Matters Pertinent to the Findings as

Provided by Fed. R. Civ. P. 23(b)(3)

73. The allegations contained within Paragraph 73 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as same constitute allegations of fact, and a response is required thereto, those allegations are denied.

74. The allegations contained within Paragraph 74 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as same constitute allegations of fact, and a response is required thereto, those allegations are denied.

### **FIRST CAUSE OF ACTION**

#### **(Breach of Contract)**

75. Defendants repeat, reallege, and incorporate their responses to Paragraphs 1 through 74 hereof as if fully set forth at length herein.

76. The allegations contained within Paragraph 76 of the Amended Complaint are not directed at Defendants; and, therefore, no response thereto is required from or made by Defendants.

77. The allegations contained within Paragraph 77 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as same constitute allegations of fact, and a response is required thereto, those allegations are denied.

78. Defendants deny the allegations contained in Paragraph 78 of the Amended Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Amended Complaint.

**WHEREFORE**, Defendants deny that Plaintiff is entitled to receive any relief sought in the Amended Complaint and hereby demands that judgment dismissing the Amended Complaint with prejudice, in addition to attorneys' fees, costs of suit, and other such relief as the Court may deem just and proper.

**SECOND CAUSE OF ACTION**

**(Breach of Implied Warranty of Merchantability)**

80. Defendants repeat, reallege, and incorporate their responses to Paragraphs 1 through 79 hereof as if fully set forth at length herein.

81. The allegations contained within Paragraph 81 of the Amended Complaint are not directed at Defendants; and, therefore, no response thereto is required from or made by Defendants.

82. The allegations contained within Paragraph 82 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto.

83. The allegations contained within Paragraph 83 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as same constitute allegations of fact, and a response is required thereto, those allegations are denied.

84. The allegations contained within Paragraph 84 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto.

85. The allegations contained within Paragraph 85 of the Amended Complaint are denied.

86. The allegations contained within Paragraph 86 of the Amended Complaint are denied.

87. The allegations contained within Paragraph 87 of the Amended Complaint are denied.

88. Defendants lack sufficient information or knowledge to form a belief as to the veracity of the allegation that Plaintiff would have acted differently as contained in Paragraph 88 of the Amended Complaint. Additionally, the remaining allegations contained within Paragraph 88 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto.

**WHEREFORE**, Defendants deny that Plaintiff is entitled to receive any relief sought in the Amended Complaint and hereby demands that judgment dismissing the Amended Complaint with prejudice, in addition to attorneys' fees, costs of suit, and other such relief as the Court may deem just and proper.

### **THIRD CAUSE OF ACTION**

#### **(Unjust Enrichment)**

89. Defendants repeat, reallege, and incorporate their responses to Paragraphs 1 through 88 hereof as if fully set forth at length herein.

90. The allegations contained within Paragraph 90 of the Amended Complaint are not directed at Defendants; and, therefore, no response thereto is required from or made by Defendants.

91. Defendants deny the allegations as they are phrased in Paragraph 91 of the Amended Complaint.

92. The allegations contained within Paragraph 92 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. To the extent that Paragraph 69 of the Amended Complaint alleges wrongdoing on the part of the Defendants, it is denied.

93. The allegations contained within Paragraph 93 of the Amended Complaint are denied.

94. The allegations contained within Paragraph 94 of the Amended Complaint are denied.

95. The allegations contained within Paragraph 95 of the Amended Complaint constitute conclusions of law for which a response is not required; and, therefore, Defendants make no response thereto. Insofar as same constitute allegations of fact, and a response is required thereto, those allegations are denied.

**WHEREFORE**, Defendants deny that Plaintiff is entitled to receive any relief sought in the Amended Complaint and hereby demands that judgment dismissing the Amended Complaint with prejudice, in addition to attorneys' fees, costs of suit, and other such relief as the Court may deem just and proper.

**PRAYER FOR RELIEF**

As to the Amended Complaint's "Prayer for Relief" paragraph, including the sub-parts, Defendants deny the relief sought therein.

**DEMAND FOR TRIAL BY JURY**

Defendants hereby demand a trial by jury on all issues so triable.

**AFFIRMATIVE DEFENSES**

By way of further response, Defendants assert and allege the following Affirmative Defenses to Plaintiff's Amended Complaint. In addition to the affirmative defenses described below and subject to its responses above, Defendants specifically reserve all rights to amend their Answer to allege any and all counterclaims against Plaintiff, if applicable, and to assert additional affirmative defenses, if appropriate.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to set forth a cause of action for which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's individual and class claims must be dismissed because neither Plaintiff nor the putative class members have suffered an injury-in-fact and, therefore, Plaintiff and the putative class members lack standing to assert the claims set forth in the Amended Complaint.

**THIRD AFFIRMATIVE DEFENSE**

The claims for relief should be dismissed because neither Plaintiff nor the class they purport to represent suffered any damages as a result of any action of Defendants.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff and the putative class members failed to mitigate the alleged damages.

**FIFTH AFFIRMATIVE DEFENSE**

Granting Plaintiff's demand would result in unjust enrichment, as Plaintiff and the putative class would receive more money than they are entitled to receive.

**SIXTH AFFIRMATIVE DEFENSE**

While denying all of the allegations of the Amended Complaint regarding liability and damages allegedly sustained by Plaintiff and the putative class members, to the extent that Plaintiff may be able to prove any such damages, same were solely and proximately caused by a third person or persons over whom Defendants had no control or right of control and for whose actions Defendants are not liable.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff and/or putative class members have expressly or impliedly consented to and approved all of the acts and omissions about which Plaintiff now complains. Accordingly, Plaintiff and/or the putative class are barred from pursuing the claims alleged in the Amended Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

The claims for relief should be dismissed based on improper venue and forum non conveniens.

Dated: December 7, 2021  
New York, New York

Respectfully submitted,

**LONDON FISCHER LLP**

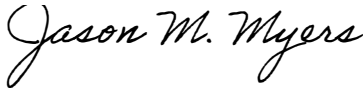
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of December, 2021, a true and accurate copy of the foregoing was filed with the Court's CM/ECF System which provides notice to all counsel of record.

Dated: New York, New York  
December 7, 2021

  
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Jason M. Myers